

418. EAI denies the allegations of **Paragraph 207** of the Complaint.

419. EAI admits that the Complainants find it convenient to attach cable plant to poles owned by EAI. EAI denies the remaining allegations contained in **Paragraph 208** of the Complaint. EAI affirmatively states that each of the safety violations reported to the Complainants raise safety and reliability concerns. EAI further states that the attachment of cable plant made by the Complainants must meet the requirements of the NESC and the specifications of EAI set forth in the pole attachment agreements and agreed upon by the Complainants for the safety and reliability of EAI's entire electrical system.

420. EAI denies that EAI has created an unacceptable and uncertain business environment for the Complainants as alleged in **Paragraph 209** of the Complaint. EAI admits that the Complainants have certain obligations under federal law and ordinances passed by municipalities but denies the remaining allegations contained in Paragraph 209 of the Complaint. EAI affirmatively states that the federal law and ordinances referenced in Paragraph 178 of the Complaint speak for themselves. EAI further states that each of the Complainants have failed to fulfill their obligations under their pole attachment agreements with EAI.

421. EAI denies the allegations contained in **Paragraph 210** of the Complaint. EAI affirmatively states that any harm to the reputation and good will, if any, which the Complainants may experience will not be the result of any action or inaction by EAI but rather will be the result of their own inability to provide reliable, safe and quality service to their customers at competitive rates.

422. EAI denies the allegations contained in **Paragraph 211** of the Complaint. EAI affirmatively states that with respect to Footnote 224 of the Complaint regarding Comcast's alleged inability to serve a subdivision, that Comcast has already made these attachments illegally and without authorization or permission from EAI, as more fully set forth above.<sup>654</sup>

423. EAI admits that the Commission recognizes that it is in the public interest to promote competition and development of communication services as alleged in **Paragraph 212** of the Complaint. EAI denies the remaining allegations contained in Paragraph 212 of the Complaint. EAI affirmatively states that it is at least equally important that the poor condition of the Complainants' cable plant should not be allowed to continue to compromise the safety and reliability of EAI's electrical systems and to endanger EAI workers, cable contractors, and the general public.

#### USS SURVEY AND INVOICING

424. EAI admits that Comcast was billed pole attachment rental for 38,691 attachments for the year of 2003, and that on January 28, 2004, Comcast was invoiced for pole attachment rental based on 68,054 attachments for the year 2004, as alleged in Paragraph 213 of the Complaint. EAI denies the remaining allegations contained in **Paragraph 213** of the Complaint. EAI states that EAI and USS subsequently discovered that the figure of 68,054 attachments initially billed to Comcast was incorrect due to clerical oversight.<sup>655</sup> Comcast was accordingly given credit for

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<sup>654</sup> Declaration of John Tabor at ¶¶ 10, 11.

<sup>655</sup> Declaration of David B. Inman at ¶ 38.

the invoice which billed the incorrect number of attachments and then was re-billed for the correct number of 51,283 attachments for the year of 2004.<sup>656</sup>

425. EAI does not have information sufficient to form a belief as to whether Comcast actually performed a test count to verify the accuracy of the number of attachments and found that attachments on SBC poles were included in the attachment count as alleged in **Paragraph 214** of the Complaint, and, therefore, denies the same. EAI admits that Mark Grimmett, Director of Business Operations, Comcast, sent a letter to David B. Inman, Joint Use Administrator, EAI, dated August 9, 2004, which stated that Comcast found EAI's attachment count to be inaccurate.<sup>657</sup> EAI affirmatively states that prior to Comcast allegedly performing a "test count" of attachments, EAI discovered the error concerning the number of attachments initially billed to Comcast. Once the error was discovered, Comcast was credited the amount initially charged and re-billed on May 17, 2004, for the correct amount based on 51,283 attachments.<sup>658</sup> EAI further states that Comcast has never provided EAI nor USS the results of the "test count" allegedly performed by Comcast.<sup>659</sup>

426. EAI admits that it sent an invoice to Comcast dated May 17, 2004, to bill pole attachment rental as alleged in **Paragraph 215** of the Complaint but affirmatively pleads that the correct, as-billed number of attachments is 51,283. EAI admits that on May 26, 2004, EAI agreed to provide Comcast attachment data for two circuits as alleged in Paragraph 215 of the Complaint. EAI denies the remaining allegations contained in Paragraph 215 of the Complaint.

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<sup>656</sup> Declaration of David B. Inman at ¶ 38.

<sup>657</sup> Letter from Mark Grimmett to David B. Inman dated August 9, 2004 attached as Exhibit "80".

<sup>658</sup> Declaration of David B. Inman at ¶ 38.

<sup>659</sup> Id. at ¶ 40.

427. EAI denies the allegations contained in **Paragraph 216** of the Complaint. EAI affirmatively states that on September 8, 2004, David B. Inman, Joint Use Administrator, EAI, gave Marc Billingsley of Comcast a CD which documented and verified in detail the number and location of each of the 51,283 attachments billed for the year of 2004.<sup>660</sup>

428. EAI denies the allegations contained in **Paragraph 217** of the Complaint. EAI affirmatively states that the CD provided to Comcast on September 8, 2004, verified the number and location of each attachment billed by EAI to Comcast. Comcast's allegations indicate that Comcast has conveniently overlooked its obligations under Section 7.2 of the pole attachment agreements, which states that the accuracy of the perpetual inventory of attachments is the responsibility of Comcast. In a similar vein, Comcast has also ignored the clear provisions of the pole attachment agreement by placing 177 attachments on *transmission towers* in Little Rock, Arkansas without written or verbal permission from EAI for these unauthorized attachments. When asked to produce the written permission given by EAI to Comcast to make these transmission tower attachments pursuant to Article I (C) (2) of the pole attachment agreement, Marc Billingsley with Comcast responded that it should be EAI's obligation to somehow show that Comcast did not have permission.<sup>661</sup>

429. On May 29, 2003, a meeting was held between representatives of Entergy and the Complainants to discuss the issue of cable attachments made to transmission structures in Arkansas by the Complainants. Specifically, those in attendance were Mike Malik, Paul Olivier, and Deidre Cullen on behalf of Entergy; Ronnie Colvin and Len Rozek on behalf of Comcast;

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<sup>660</sup> Id. at ¶ 38.

<sup>661</sup> Declaration of Tony Wagoner at ¶ 43.

Joe LaPorte and Robert Puebla on behalf of Cox; Harvey Oxner on behalf of WEHCO; and Greg Yielding on behalf of Arkansas Cable Telecommunications Association. At this meeting Entergy asked Ronnie Colvin, Vice-President and General Manager of Comcast, to provide Entergy a copy of the written agreement between EAI and Comcast and the written permission received from EAI to allow Comcast to attach to transmission structures.

430. In response, on June 13, 2003, Mr. Colvin sent Mike Malik the pole attachment agreement attached as Exhibit "2A" of the Complaint to represent Comcast's authority and permission to attach to EAI's transmission line structures.<sup>662</sup> As previously stated, Article I (C)(2) of the pole attachment agreement expressly *prohibits* attachments to transmission structures without special written permission from EAI. To date, Comcast has never produced this written permission and EAI affirmatively states that EAI has never granted permission, written or verbal, for Comcast to make attachments to transmission structures in Arkansas. Also at the meeting held on May 29, 2003, Entergy requested Mr. Colvin to provide Entergy the number and locations of all Comcast attachments on EAI's transmission line structures in Arkansas. Not surprisingly, it was necessary for Mr. Colvin to request Entergy's transmission line maps in order to be able to locate these unauthorized attachments. In his letter to Mike Malik dated June 13, 2003, Mr. Colvin stated that Comcast was in the process of overlaying the maps provided by Mr. Malik with Comcast plant.<sup>663</sup>

431. On August 4, 2003, Webster Darling, Senior Counsel, EAI, sent a letter to Kyle Birch, Senior Counsel, Comcast to demand Comcast to produce the written permission obtained from

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<sup>662</sup> See letter dated June 13, 2003, from Ronnie Colvin, Comcast, to Mike Malik, Entergy, attached at Exhibit "76."

<sup>663</sup> Id., Exhibit "76."

EAI to allow Comcast to make attachments to EAI's transmission structures and to demand Comcast strand maps to identify the location of Comcast plant attached to EAI facilities, including these transmission structures.<sup>664</sup> On September 15, 2003, Kyle Birch, Senior Counsel, Comcast, sent Webster Darling, Senior Counsel, EAI, a letter stating that a ride-out by Comcast was necessary to determine the location of attachments made by Comcast to EAI's transmission towers. Certainly, if maps identifying facilities for proposed attachments had been sent by Comcast to EAI prior to connecting the attachments as Mr. Birch suggested had been done in his letter dated September 15, 2003, or if Comcast had submitted an application and received a written permit or authorization from EAI to make these attachments as required, a ride-out by Comcast would not have been necessary to determine the number and locations of attachments to transmission structures.

432. Again, to date, Comcast has failed to produce any written agreement or written permission from EAI to allow attachments to transmission structures, and EAI states that no such agreement or permission ever existed. At the insistence of Entergy, on September 22, 2003, Ronnie Colvin, Vice-President and General Manager of Comcast sent Mike Malik, Engineer, Transmission Line Design, maps to ostensibly identify Comcast attachments to EAI's transmission structures. Mr. Colvin indicates that the maps identified 142 total attachments made by Comcast to EAI's transmission poles in Arkansas. However, EAI directed USS to conduct a pole attachment count of Comcast attachments to EAI's transmission structures solely in Little Rock, Arkansas. USS found 177 attachments made by Comcast to these transmission

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<sup>664</sup> See letter from Webster Darling, Senior Counsel, EAI, to Kyle Birch, Senior Counsel, Comcast, dated August 4, 2003, attached as Exhibit "73." Also, see letter from Kyle Birch, Senior Counsel, Comcast, to Webster Darling, Senior Counsel, EAI, dated September 15, 2003, attached as Exhibit "89."

structures.<sup>665</sup> This again evidences Comcast's total disregard of the terms and conditions of its pole attachment agreements with EAI, its disregard for the safety and reliability of EAI's plant, EAI's personnel, Comcast's contractors, and the general public, and Comcast's practice of placing unauthorized attachments in addition to underreporting attachments as part its "catch me if you can" business scheme.

433. It is also important to note that the attachments made by Comcast to EAI's transmission towers were made with ungalvanized brackets which may cause the steel towers to rust, which in turn, compromises the integrity and strength of these high voltage structures.<sup>666</sup> EAI also states that EAI has appropriately demanded payment in the amount of \$43,568.32 representing the unpaid balance of pole attachment rental billed to Comcast for the year 2004 based on 51,283 attachments and the amount of \$341,623.88 representing back rental for the years of 1999 through and including 2003 for 12,592 unauthorized attachments at the rate of \$3.46 per attachment plus underpayment interest pursuant IRS Rev. Rul. 2004-26.<sup>667</sup>

434. EAI admits that Comcast received the additional information requested for two circuits on October 11, 2004, as alleged in **Paragraph 218** of the Complaint. EAI denies that Comcast's analysis identified errors or methodologies inconsistent with past practices as alleged in Paragraph 218 of the Complaint. EAI admits that attachments to drop poles were counted for

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<sup>665</sup> Declaration of Tony Wagoner at ¶ 43.

<sup>666</sup> Id. at ¶ 43.

<sup>667</sup> Declaration of David B. Inman at ¶ 40; *see also*, Exhibit "74."

billing purposes in the year of 2004, but denies that this was a new standard as alleged in Paragraph 218 of the Complaint.<sup>668</sup>

435. EAI denies the allegations contained in **Paragraph 219** of the Complaint. EAI affirmatively states that EAI has billed Comcast for attachments to drop poles since at least 1984 and attachment counts previously performed for Comcast attachments included attachments to service drop poles.<sup>669</sup>

436. EAI denies the allegations contained in **Paragraph 220** of the Complaint. In particular, the circumstances underlying the cases referenced in Footnote 238 of the Complaint involving the Public Service Company of Colorado are entirely different than those present here, and have been mischaracterized by the Complainants. As indicated above, EAI has been billing for drop poles since at least 1984, and Comcast has been paying for the same. This is not a situation where the cable company was without notice of such billing, or where the practice of the parties was abruptly altered. Further, EAI asserts that the referenced *Public Service Company of Colorado* FCC and Circuit court decisions speak for themselves.

437. EAI denies the allegations contained in **Paragraph 221** of the Complaint and affirmatively states that the parties' past billing practices have included attachments to drop poles and the Commission should order Comcast to pay appropriate back-rental charges and underpayment interest based on 12,592 unauthorized attachments.<sup>670</sup>

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<sup>668</sup> Declaration of Michael Bethea at ¶ 6.

<sup>669</sup> Declaration of Michael Bethea at ¶ 6.

<sup>670</sup> Declaration of David B. Inman at ¶ 40.



438. EAI denies the allegations contained in **Paragraph 222** of the Complaint. EAI affirmatively states that it is its practice to count attachments based on one foot of space on poles. If there are one or more attachments within a space of one foot, then only one attachment is counted for purposes of billing.<sup>671</sup> This is the general practice explained by David B. Inman to Comcast.<sup>672</sup> Through-bolts are counted as a separate attachment regardless of whether they are placed within 12 inches of another attachment. This is because attaching these bolts requires holes to be drilled completely through the pole which compromises the integrity, longevity and strength of the pole, especially if 2 or more through-bolts are placed within 12 inches or less of one another.<sup>673</sup> Additionally, EAI's engineering standards incorporated in the pole attachment agreements require these bolts to be spaced 12 inches apart.

439. EAI denies the allegations of **Paragraph 223** of the Complaint. The general method for counting attachments set forth by David B. Inman in the referenced letter was not intended to include an explanation of counting through-bolts which account for a very small number of the attachments counted for billing purposes.<sup>674</sup> EAI affirmatively states that counting through-bolts as a separate attachment has a very minimal impact on the amounts billed for attachment rentals.<sup>675</sup>

440. EAI is without information sufficient to form a belief as to whether Comcast has conducted its own inspection to verify the number of attachments which have been reported by EAI as alleged in **Paragraph 224** of the Complaint and, therefore, denies the same. EAI admits

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<sup>671</sup> Declaration of David B. Inman at ¶ 39.

<sup>672</sup> Id. at ¶ 39.

<sup>673</sup> Declaration of David B. Inman at ¶ 39.

<sup>674</sup> Declaration of David B. Inman at ¶ 39.

<sup>675</sup> Declaration of David B. Inman at ¶ 39.

that it demands back rental charges plus interest for 12,592 unauthorized attachments made by Comcast as alleged in Paragraph 224 of the Complaint. Comcast has not provided EAI with the results of any such inspection. EAI affirmatively states that on September 8, 2004, EAI furnished Comcast a CD which contained all information necessary to verify the accuracy of the number of attachments and Comcast, to date, has failed and refused to pay EAI the remaining balance due for the pole attachment rental billed for the year of 2004, and back rental charges plus interest for 12,592 unauthorized attachments. EAI denies the remaining allegations contained in Paragraph 224 of the Complaint.

441. EAI denies the allegations contained in **Paragraph 225** of the Complaint. EAI affirmatively states that to the best of its knowledge and belief, EAI has not assumed ownership of any SBC poles with Comcast attachments from 1999 to date.<sup>676</sup>

442. EAI denies the allegations of **Paragraph 226** of the Complaint. EAI affirmatively states that since 1999 the pole attachment rental payments from EAI to SBC and likewise from SBC to EAI have remained the same.<sup>677</sup> EAI further states that Comcast is responsible for the accuracy of the perpetual inventory of Comcast attachments made to EAI poles pursuant to Section 7.2 of the pole attachment agreement and EAI has no obligation to provide notice to Comcast regarding any changes of ownership of poles. Further, EAI states that any overpayment made by Comcast to SBC for attachments for poles owned by EAI is a matter to be resolved between Comcast and SBC.

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<sup>676</sup> Declaration of David B. Inman at ¶ 42.

<sup>677</sup> Declaration of David B. Inman at ¶ 42.

443. EAI denies the allegations contained in **Paragraph 227** of the Complaint. EAI affirmatively states that Comcast is the entity in the best position to know whether the pole attachment rental payments made by Comcast to SBC include attachments to EAI owned poles. As previously stated, Comcast is the party responsible for the accuracy of the perpetual inventory of the number of Comcast attachments to EAI owned poles under the terms of the pole attachment agreement. Again, whether Comcast has made overpayments to SBC for attachments to EAI owned poles is a matter to be resolved between Comcast and SBC not EAI.

444. EAI denies the allegations contained in **Paragraph 228** of the Complaint.

445. EAI denies the allegations contained in **Paragraph 229** of the Complaint. EAI affirmatively states that EAI does not require Complainants to pay penalties or back rental payments for poles owned by SBC.

446. EAI also denies the allegations of **Paragraph 230** of the Complaint and affirmatively states that EAI should not be compelled to perform an accounting regarding transfer of ownership of poles in the Complainants service areas as alleged in Paragraph 230 of the Complaint. EAI affirmatively states that Comcast is in the best position and should carry the burden to show that Comcast has made payments to SBC for poles no longer owned by SBC, to include identification of the poles in dispute, with the dates and amounts of any payments since ownership allegedly changed from SBC to EAI. EAI further states that Comcast has been provided detailed information necessary to verify the accuracy of the number of attachments made by Comcast to EAI poles. Comcast continues to make allegations in broad generalities and when asked to provide more specific information, whether related to safety violations, or number

of billable attachments, Comcast only reverts back to the same broad sweeping allegations without basis in fact or specifics.

447. EAI denies the allegations in **Paragraph 231** of the Complaint. EAI affirmatively states that EAI and USS have both previously attempted to substantiate these claims made by Bennett Hooks at Alliance but have been unable to do so. On several occasions, Mr. Hooks has been asked for the location of the poles referenced in paragraph 231 of the Complaint but he has been unable to provide this information. For example, in one instance, Tony Wagoner with USS and Brad Welch with EAI met Mr. Hooks in Plumerville to perform a joint post-inspection. Mr. Wagoner provided Mr. Hooks a map and asked him to identify the locations where USS missed poles. Mr. Hooks was unable to do so.<sup>678</sup> In a further attempt to resolve this issue with Alliance, Mr. Wagoner advised Mr. Hooks that if the exact locations of the "missing poles" were hard to find, a GPS instrument could be used. Mr. Wagoner went so far as to offer to loan Mr. Hooks the use of a GPS instrument.<sup>679</sup> Again, Mr. Hooks has been unable to identify the purported "missing poles." EAI affirmatively states that, on information and belief, it appears that the basis for Mr. Hooks' unsubstantiated claim is that he was working from a modified spread sheet developed at the Alliance offices. Once Mr. Hooks started working from the USS field work sheets rather than Alliance's faulty data, the unsubstantiated claims of missed poles were not heard again until resurrected in the Complaint. EAI affirmatively states that the "gig sheet" referred to by Complainants in paragraph 231 was actually a work sheet prepared by Romaine

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<sup>678</sup> Declaration of Tony Wagoner at ¶ 29.

<sup>679</sup> Declaration of Tony Wagoner at ¶ 29.

McDaniel with Alliance.<sup>680</sup> During a May 24, 2004 meeting with Mr. Hooks and Ms. McDaniel, she informed USS that she had a list of completed violations and that she would e-mail those to USS. The work sheet was titled “gig sheet.” Upon examining this list, USS noted 132 poles that had not previously been flagged by USS as having violations.<sup>681</sup> EAI is without knowledge sufficient to form a belief as to the nature of the items that Alliance considered a violation but USS did not. EAI affirmatively states that the conclusions asserted in paragraph 231 of the Complaint are not logically supported by Alliance’s “gig sheet” or by actual facts.

448. EAI denies the allegations in **Paragraph 232** of the Complaint.

449. EAI admits that Circuits K130 and K110 are duplicative circuits inspected by USS with different results as alleged in **Paragraph 233** of the Complaint. EAI affirmatively states two circuit maps given to USS by EAI were mislabeled with incorrect circuit names. This resulted in two inspections of the same circuit, one in July 2003, and the other in October 2003. The correct circuit name is K-110. The inspection performed in July 2003, is accurate. USS did not bill for the inspection performed in October 2003. EAI affirmatively states that USS has been in regular communication with Comcast and it had never mentioned this alleged discrepancy prior to the Complaint.<sup>682</sup> EAI denies the remaining allegations in Paragraph 233 of the Complaint.

450. EAI admits that the inspection of Circuit K110 in July 2003, reported 105 violations as alleged in **Paragraph 234** of the Complaint. EAI affirmatively states that the results of the inspection performed for Circuit K110 in July 2003, are accurate. EAI states that it is without

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<sup>680</sup> Declaration of Tony Wagoner at ¶ 31; email from Romaine McDaniel to John Tabor attached as Exhibit “70.”

<sup>681</sup> *Id.*

<sup>682</sup> Declaration of Tony Wagoner at ¶¶ 36-39.

knowledge sufficient to form a belief as to the truth of the allegation that Comcast performed no work on the Circuit to correct the noted violations prior to the second inspection and therefore denies that allegation.

451. EAI admits that the inspection performed for Circuit K110 in October 2003, reported 71 safety violations as alleged in **Paragraph 235** of the Complaint. EAI affirmatively states that the results for this inspection are inaccurate. EAI further states that neither Comcast nor EAI were billed for this inspection.

452. EAI denies the allegations of **Paragraph 236** of the Complaint. EAI affirmatively states that the poles on the maps used by two different inspectors were not numbered the same by USS and one inspector performed his inspection beginning west from the substation and the other began east from the substation. This explains in large part why the inspections did not report the same violations for the same pole numbers.<sup>683</sup>

453. EAI states that it is without information sufficient to form a belief in the truth of the allegation that Comcast and Alliance have conducted a complete re-audit of their attachments to EAI poles as alleged in **Paragraph 237** of the Complaint and, therefore, denies such allegation. EAI has not been informed of the results of any such audit. EAI denies the remaining allegations in paragraph 237 of the Complaint.

454. EAI denies the allegations in **Paragraph 238** of the Complaint. EAI states that reports were received on a circuit-by-circuit basis from USS which showed the cost of inspections for

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<sup>683</sup> Declaration of Tony Wagoner at ¶¶ 36-39.

each circuit, cost per pole, number of poles inspected, and number and type of violations.<sup>684</sup>

*EAI also has field inspected every reported violation and EAI employees, Brad Welch and David Kelley, participated in joint ride-outs in the field to review the finding of violations.*<sup>685</sup> EAI has reviewed costs associated with the inspection on an ongoing basis inasmuch as EAI has allocated to itself and paid to USS a substantial amount of the total inspection costs. However, the Complainants have not paid any amount for these inspections. EAI affirmatively states that the reported safety violations are accurate and the inspections were performed in a cost efficient manner.

455. EAI further states that USS maintains its own internal quality control program to insure that the results of its inspections are accurate and that costs are kept under control. USS has an officer of the company whose designated responsibility is quality control.<sup>686</sup> This officer performs sample follow-up inspections for each inspector and reports his results. In addition, USS had an outside consulting firm review the USS inspection processes and procedures and its quality control program.<sup>687</sup>

456. EAI further states that from a total of 6,487 violations field checked as of September 13, 2003, Comcast disputed only 516 of these reported violations.<sup>688</sup> In other words, Comcast disputed less than 8% of the violations which had been pre-surveyed and field checked by Comcast as of September 13, 2003. 359 of the 516 violations disputed by Comcast were

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<sup>684</sup> Declaration of Gary Bettis at ¶ 22.

<sup>685</sup> Declaration of Brad Welch at ¶ 20.

<sup>686</sup> Declaration of Wilfred Arnett at ¶ 9.

<sup>687</sup> Declaration of Wilfred Arnett at ¶ 9.

<sup>688</sup> See Comcast Status Summary – Pole Violations Addressed generated by Comcast contractor UCI attached as Exhibit “25”; Declaration of Wilfred Arnett at ¶ 32.

reviewed in the field by USS and UCI. During these joint ride-outs, it was found that 170 of the 359 Comcast disputed violations could be corrected by some means other than the make-ready work requested by USS. 144 of the 359 Comcast disputed violations were verified to have been caused by Comcast and required Comcast to be responsible for the necessary make-ready work. 32 of the 359 Comcast disputed violations were found to be EAI's responsibility and required EAI to perform make-ready work. 13 of the 359 Comcast disputed violations were found to have been caused by third-party attachers who were responsible for the make-ready work.<sup>689</sup> The results of these field ride-outs between USS and UCI of Comcast disputed violations demonstrate that the safety inspections reported by USS were performed and reported accurately.

#### **EAI's SAFETY STANDARDS**

457. EAI denies the allegations of **Paragraph 239** of the Complaint.

458. EAI admits that the inspection of Comcast and Alliance cable plant has been completed with the exception of post-inspection work to be performed when, and if, Comcast and Alliance ever correct the reported safety violations as alleged in **Paragraph 240** of the Complaint. USS has performed safety inspections of a small portion of WEHCO cable plant as alleged in Paragraph 240 of the Complaint and affirmatively states that the inspection performed with respect to Cox facilities were related to pre and post inspections for make-ready work associated with total rebuild projects undertaken by Cox rather than safety inspections. EAI further states that Comcast, Alliance and WEHCO have been furnished inspection sheets for each reported safety violation. An example of an inspection sheet and the information furnished to these Complainants with respect to each safety violation is attached as Exhibit 87. EAI further states

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<sup>689</sup> Declaration of John Tabor at ¶ 32.



that except for the information specific to Cox, the Violation Progress Reports attached as Exhibits 82, 83, and 84 accurately report the current status of all reported safety inspections for each Complainant. With respect to Cox, USS reported 355 violations to Cox involving the rebuild project in Malvern, Arkansas. As of this date, 58 locations requiring make-ready work have been designed and delivered to Cox on December 17, 2004. Only 50 violations remain to be corrected by Cox for this project.<sup>690</sup> EAI states that Comcast has not reported to EAI or USS any corrections made since February 2004 – approximately one year ago. Either Comcast is making corrections which are not being reported in order that necessary post-inspections can be performed or Comcast is not making corrections.

459. EAI denies the allegations contained in **Paragraph 241** of the Complaint. EAI affirmatively states that the vast majority of the reported safety violations do not meet the requirements of any edition of the NESC.<sup>691</sup> EAI also states that each and every reported safety violation either does not meet the requirements of the applicable NESC or the specifications set forth the applicable pole attachment agreement. The safety violations attributed to the Complainants were not caused by EAI. EAI has taken full responsibility for violations which were determined to have been caused by EAI. The Complainants have been repeatedly advised that if they dispute a particular violation it should be brought to the attention of EAI and USS to be resolved on a case-by-case basis.

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<sup>690</sup> Declaration of Wayne Harrell at ¶ 18.

<sup>691</sup> Declaration of Wilfred Arnett at ¶ 23.

460. EAI denies the allegations contained in **Paragraph 242** of the Complaint. EAI states that USS has reported safety violations attributable to telephone facilities using applicable NESC and EAI specifications.

461. EAI denies the allegations of **Paragraph 243** of the Complaint. EAI affirmatively states that EAI has completed 12,676 corrections and plans to have all violations corrected by December 31, 2005.<sup>692</sup>

462. EAI denies the allegations contained in **Paragraph 244** of the Complaint. EAI affirmatively states that the reported safety violations for Comcast are accurately reflected in the described Comcast Violation Progress Report attached as Exhibit 82. EAI objects to the characterization of "Detach cable guys from Entergy Anchors" as alleged in Paragraph 244 of the Complaint and affirmatively refers to its responses set forth above to the allegations in Paragraph 114 of the Complaint. EAI specifically states that over one half of the 5,745 safety violations reported to Comcast relating to anchors are for locations where Comcast has no guy wire or anchor *at all* to support the unbalanced load on the pole created by Comcast attachments.

463. EAI denies the allegations of **Paragraph 245** of the Complaint.

464. EAI denies the allegations contained in the first sentence of **Paragraph 246** of the Complaint and affirmatively states that the pole attachment agreements state that the Complainants' use of poles shall conform to the NESC as a *minimum* requirement. EAI admits the standard of the NESC covers basic provisions which are voluntary and adopted by the State of Arkansas as alleged by Paragraph 294 of the Complaint – also as a *minimum* standard. EAI

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<sup>692</sup> Declaration of David Kelley at ¶ 12.

denies the remaining allegations contained in Paragraph 294 of the Complaint. EAI affirmatively states that the NESC sets the minimum requirements to be met to safeguard persons for the installation, operation or maintenance of electric and communication facilities.<sup>693</sup>

465. EAI further states that Ark. Code Ann. §§ 11-5-303 and 304 cited by the Complainants in Footnote 259 of the Complaint have no bearing or applicability with respect to design specifications required for cable television attachments. However, Ark. Code Ann. § 23-17-236 also cited by Complainants in Footnote 259 of the Complaint provides that the construction of telecommunication lines and facilities by the Complainants shall comply with the standards of the NESC as a *minimum* requirement or the requirement set by the Arkansas Public Service Commission. EAI is not familiar with 126 03 Ark. Reg. 011 cited in Footnote 259 of the Complaint and, therefore, denies that this cited regulation, if existing, has any applicability with respect to any issue or allegation raised in the Complaint. EAI is familiar with 126 03 CARR 011 (2004) which is the cite for the Special Rules – Electric of the Arkansas Public Service Commission. EAI affirmatively refers to its responses set forth above with respect Paragraph 55 of the Complaint.

466. EAI admits that the Complainants have quoted Section 013 B. 2. of the 2002 edition of the NESC as alleged in **Paragraph 247** of the Complaint. EAI affirmatively states that Section 013 of the NESC speaks for itself and that to the extent the allegations in Paragraph 247 of the Complaint conflict with Section 013 of the NESC those allegations are denied.

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<sup>693</sup> Declaration of Lonnie Buie, Professional Engineer, Pettit & Pettit Consulting Engineers, Inc., at ¶ 22.

467. EAI admits that the Complainants have quoted a portion Section 013 B.3. of the 2002 edition of the NESC as alleged in **Paragraph 248** of the Complaint. EAI affirmatively states that Section 013 of the NESC reads in its entirety as follows:

013. Application

A. New Installations and Extensions

1. These rules shall apply to all new installations and extensions, except that they may be waived or modified by the administrative authority. When so waived or modified, safety shall be provided in other ways.  
EXAMPLE: Alternative working methods, such as the use of barricades, guards, or other electrical protective equipment, may be implemented along with appropriate alternative working clearances as a means of providing safety when working near energized conductors.
2. Types of construction and methods of installation other than those specified in the rules may be used experimentally to obtain information, if done where:
  - a. Qualified supervision is provided,
  - b. Equivalent safety is provided, and
  - c. On joint use facilities, all affected parties agree.

B. Existing Installations

1. Where an existing installation meets, or is altered to meet, these rules, such installation is considered to be in compliance with this edition and is not required to comply with any previous edition.
2. Existing installations, including maintenance replacements, that currently comply with prior editions of the Code, need not be modified to comply with these rules except as may be required for safety reasons by the administrative authority.
3. Where conductors or equipment are added, altered, or replaced on an existing structure, the structure or the facilities on the structure need not be modified or replaced if the resulting installation will be in compliance with either (a) the rules that were in effect at the time of the original installation, or (b) the rules in effect in a subsequent edition to which the installation has been previously brought into compliance, or (c) the rules of this edition in accordance with Rule 013.B.1.

468. EAI denies the allegations contained in **Paragraph 249** of the Complaint. EAI states that the vast majority of the reported safety violations *have never complied with any edition* of the NESC, and the Complainants are now being required to correct these safety violations under the

current edition of the NESC.<sup>694</sup> EAI has advised the Complainants on numerous occasions that EAI and USS will consider each disputed safety violation on a case-by-case basis provided a professional electrical engineer licensed in the State of Arkansas certifies in writing that the particular condition is not a violation. Comcast and Alliance however, have failed to deal with specific safety violations but rather make conclusory allegations based in broad generalities relative to whole classes of reported safety violations.

469. EAI denies the allegations of **Paragraph 250** of the Complaint. EAI affirmatively states that it recognizes an overlash of cable, without more, typically does not require new attachments. However, EAI further states that the “upgrade” performed by Comcast beginning in 1999 involved more than simply overlashing cable as alleged in the Complaint. This project required Comcast to replace all electronic components throughout the entire cable system which involved substantial work performed on at least 95% of all poles with Comcast attachments.<sup>695</sup> EAI affirmatively refers to its above responses with respect Paragraph 90 of the Complaint. Regardless, EAI states that the principles of grandfathering are uniformly recognized and applied by EAI not only to its own facilities but those of other attachers in appropriate instances. Again, EAI has repeatedly told the Complainants that safety violations may be disputed on a case-by-case basis and cleared provided a professional electrical engineer licensed in the State of Arkansas certifies in writing that the particular condition is not a violation.

470. EAI denies the allegations of **Paragraph 251** of the Complaint. EAI states that the entire holding *Knology v. Georgia Power Company* speaks for itself and to the extent the allegations in

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<sup>694</sup> Declaration of Wilfred Arnett at ¶ 23.

<sup>695</sup> Declaration of John Tabor at ¶ 7

Paragraph 251 of the Complaint conflict with such holding, those allegations are denied. EAI also noted that the *Knology* decision rejected blanket claims of grandfathering without specific evidence; as in that case, the Complainants have not provided any proof of grandfathering here either.

471. EAI denies the allegations contained in **Paragraph 252** of the Complaint. EAI affirmatively refers to its responses to Paragraphs 55 and 75 of the Complaint above. EAI further states that each edition of the NESC does not contain the provisions of Section 013 as alleged by the Complainants.<sup>696</sup> The principles of grandfathering first appeared in the 1977 edition of the NESC.<sup>697</sup> EAI also states that the vast majority of the safety violations reported to each of the Complainants have never met the standard of any edition of the NESC.<sup>698</sup>

472. EAI admits the allegations of the first sentence of **Paragraph 253** of the Complaint. EAI denies that the Complainants have never agreed to be subject to requirements in excess of the NESC standards or to waive application of the principles of grandfathering as alleged in Paragraph 253 of the Complaint. EAI affirmatively states that the provisions of the pole attachment agreements make clear that the standard of the NESC sets the basic minimum requirements for cable companies' use of poles and that as developments and improvements are made in the industry, the basic minimum requirements may be supplemented by agreement between the parties. The pole attachment agreements further provide that the cable companies' cable, wires and appliances - in each and every location - shall be erected and maintained in

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<sup>696</sup> Declaration of Lonnie Buie, Professional Engineer, Pettit & Pettit Consulting Engineers, Inc., at ¶ 45.

<sup>697</sup> Declaration of Lonnie Buie, Professional Engineer, Pettit & Pettit Consulting Engineers, Inc., at ¶ 45.

<sup>698</sup> Declaration of Wilfred Arnett at ¶ 23; Declaration of David Kelley at ¶ 9.

accordance with the specifications of EAI. Drawings 1, 2, 3, and 4, attached to and made a part of the agreements depict detailed EAI specifications to be followed for cable company attachments. All of these EAI specifications were agreed upon by each of the Complainants or their predecessors in interest.

473. EAI admits that less than 12 inches of spacing between communication cables is a violation of both the pole attachment agreement and the 2002 edition of the NESC as alleged in **Paragraph 254** of the Complaint. EAI denies the remaining allegations contained in Paragraph 254 of the Complaint.

474. EAI admits that the 12 inch clearance between communications cable was not a requirement of the NESC until the 2002 edition of the NESC as alleged in **Paragraph 255** of the Complaint. EAI denies the remaining allegations contained in Paragraph 255 of the Complaint. EAI affirmatively states that Section 235 H. 1. speaks for itself, and to the extent the allegations in Paragraph 255 of the Complaint conflict with the standard of Section 235 H. 1. those allegations are denied. Section 235 H. 1. of the 2002 edition of the NESC provides as follows:

- H. Clearance and Spacing Between Communication Conductors, Cables, and Equipment
  - 1. The spacing between messengers supporting communication cables should be not less than 300 mm (12 in) except by agreement between the parties involved.
  - 2. The clearances between the conductors, cables, and equipment of one communication utility to those of another, anywhere in the span, shall be not less than 100 mm (4 in), except by agreement between the parties involved.

475. EAI affirmatively states that the word "should" as used in the NESC means that a standard is mandatory unless it is not practical to apply based on additional local conditions not

specified.<sup>699</sup> If local conditions make it impractical to meet this standard then Section 1.

Paragraph 012. C. is met which provides that [f]or all particulars not specified in these rules, construction and maintenance should be done in accordance with accepted good practice for the given local conditions known at the time by those responsible for the construction or maintenance of the communication or supply lines and equipment. EAI further states that standard 235. H. provides there shall be 12 inches of spacing at the pole between communication cable messengers unless all parties involved agree to a lesser spacing. This means that not only must the communication companies agree to a lesser spacing but the pole owner as well.<sup>700</sup> This is so because this bolt hole spacing will have an effect on the strength of the owner's pole.<sup>701</sup>

476. EAI denies the allegations of **Paragraph 256** of the Complaint. EAI affirmatively states that the 12 inch separation between communication cables is a requirement under Drawings 1 – 4 attached to and made a part of the pole attachment agreements. Also, Section 3.4 of the Society of Cable Telecommunications Engineers Recommended Practices for Coaxial Cable Construction and Testing which speaks to clearances and separations at the pole refers cable companies to the Blue Book Manual of Construction Procedures. Paragraph 3.06 of Section 3. B. of the Blue Book Manual of Construction Procedures requires a minimum of 12 inches of vertical separation between communications facilities placed on the same side of a pole.

Otherwise, EAI has informed the Complainants that clearances of less than 12 inches between communications facilities is an issue to be agreed and decided upon between the Complainants,

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<sup>699</sup> Declaration of Lonnie Buie, Professional Engineer, Pettit & Pettit Consulting Engineers, Inc., at ¶ 51.

<sup>700</sup> Declaration of Lonnie Buie, Professional Engineer, Pettit & Pettit Consulting Engineers, Inc., at ¶ 52.

<sup>701</sup> Declaration of Lonnie Buie, Professional Engineer, Pettit & Pettit Consulting Engineers, Inc., at ¶ 52.



the telephone utility and EAI. On information and belief EAI states that the agreement between Comcast and SBC references the Blue Book Manual of Construction Procedures which specifically requires 12 inches of clearance between CATV and telephone cables.

477. EAI denies the allegations contained in **Paragraph 257** of the Complaint. EAI affirmatively states EAI has not required the Complainants to re-space cable unless other safety violations exist on the pole which require an adjustment of cable to correct the violation. EAI further states that there are not "thousands of grandfathered communications cables" as alleged in Paragraph 257 of the Complaint.

478. EAI denies the allegations of **Paragraph 258** of the Complaint. EAI states that EAI has reported violations to SBC to have corrections made for those violations.

479. EAI admits that EAI requires the Complainants to install a bonding wire on every pole where a vertical ground wire exists in accordance with Section 2.7 of the pole attachment agreements as alleged in **Paragraph 259** of the Complaint. EAI denies the remaining allegations contained in Paragraph 259 of the Complaint. EAI affirmatively refers to its responses above to Paragraphs 77 and 115 of the Complaint.

480. EAI denies the allegations of **Paragraph 260** of the Complaint and affirmatively states that it will be very difficult, if not impossible, for the Complainants to demonstrate compliance with any edition of the NESC with respect to bonding unless required to bond on every pole where a vertical ground wire exists within EAI's distribution system.

481. EAI denies the allegations contained in **Paragraph 261** of the Complaint.